

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Market Dominant Product Prices
Inbound Market Dominant Multi-Service Agreements
with Foreign Postal Operators 1
Canada Post Corporation – United States Postal Service
Bilateral Agreement (MC2010-35)
Negotiated Service Agreement

Docket No. R2016-4

NOTICE AND ORDER CONCERNING TYPE 2 RATE ADJUSTMENT
AND FILING FUNCTIONALLY EQUIVALENT AGREEMENT

(Issued December 23, 2015)

I. INTRODUCTION

On December 17, 2015, the Postal Service filed a notice, pursuant to 39 CFR 3010.40 *et seq.*, announcing a Type 2 Rate Adjustment to improve default rates established under the Universal Postal Union (UPU) Acts.¹ The Notice concerns the Canada Post 2016 Agreement (Agreement),² the inbound portion of a bilateral agreement with Canada Post Corporation (“Canada Post” or “CPC”) that the Postal Service contends is functionally equivalent to the baseline agreement with Koninklijke TNT Post B.V and TNT Post PakketSERVICE Benelux B.V. (“TNT Post”), (“the TNT

¹ Notice of United States Postal Service of Type 2 Rate Adjustment, and Notice of Filing Functionally Equivalent Agreement, December 17, 2015, at 1 (Notice).

² The Agreement replaces the Canada Post 2014 Agreement reviewed by the Commission in PRC Docket No. R2014-3. Docket No. R2014-3, Order No. 1940, Order Approving an Additional Inbound Market Dominant Multi-Service Agreement with Foreign Postal Operators 1 Negotiated Service Agreement (with Canada Post Corporation), December 31, 2013.

Agreement”).³ The TNT Agreement is the baseline agreement that the Commission included within the Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 product on the market dominant product list of the Mail Classification Schedule. *Id.*

II. CONTENTS OF FILING

The Postal Service’s filing consists of the Notice, two attachments, and redacted and unredacted versions of an Excel file with supporting financial workpapers. Notice at 2. Attachment 1 is an application for non-public treatment of materials filed under seal with the Commission. *Id.* Attachment 2 is a redacted copy of the Agreement. *Id.* On December 22, 2015, the Postal Service filed a signed version of the agreement.⁴

The Agreement is the successor agreement to one previously found to be functionally equivalent to the baseline agreement in the Inbound Market Dominant Multi-Service Agreement with Foreign Postal Operators 1 (MC2010-35) product.⁵ The Agreement provides that the effective date is February 1, 2016 for market dominant products. Notice, Attachment 2 at 8.

The Postal Service asserts that it is providing at least the 45 days advance notice required under 39 CFR 3010.41; and identifies the parties to the Agreement as the United States Postal Service and Canada Post, the designated postal operator for handling letter-post originating in Canada. Notice at 3, 6. The Postal Service further asserts that the Agreement is intended to remain in effect until December 31, 2017. *Id.* at 4.

The Postal Service states that the Agreement includes negotiated pricing and settlement for various inbound letter-post products, including registered mail, small

³ See Docket Nos. MC2010-35, R2010-5, and R2010-6, Order No. 549, Order Adding Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 to the Market Dominant Product List and Approving Included Agreements, September 30, 2010.

⁴ See Docket Nos. CP2016-57 and R2016-4, Notice of United States Postal Service of Filing Executed Agreement, December 22, 2015.

⁵ See Order No. 549, see *also* Order No. 1940.

packets with delivery confirmation, and International Business Reply Service (IBRS).
Id.

Reporting requirements. 39 CFR 3010.43 requires the Postal Service to submit a detailed data collection plan. In lieu of a special data collection plan for the Agreement, the Postal Service proposes to report information on the Agreement through the Annual Compliance Report. *Id.* at 8. The Postal Service also invokes, with respect to service performance measurement reporting under 39 CFR 3055.3(a)(3), the standing exception in Order No. 996 for all agreements filed in the Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 product grouping.⁶

Consistency with applicable statutory criteria. The Postal Service observes that Commission review of a negotiated service agreement addresses three statutory criteria under 39 U.S.C. 3622(c)(10) as codified in 39 CFR 3010.40. These are whether the agreement: (1) improves the Postal Service's net financial position or enhances the performance of operational functions; (2) will not cause unreasonable harm to the marketplace; and (3) will be available on public and reasonable terms to similarly situated mailers. Notice at 8. The Postal Service asserts that it addresses the first two criteria in its Notice and that the third criterion is inapplicable, as there are no entities similarly situated to Canada Post in terms of its ability to tender broad-based small packet flows from Canada or serve as a designated operator for letter-post originating in Canada. *Id.* at 8-9.

Functional equivalence. The Postal Service addresses reasons why it considers the Agreement functionally equivalent to the baseline TNT Agreement and requests that the Agreement be added to the market dominant product list within the Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 product. *Id.* at 9-10, 13. The Postal Service identifies differences between the Agreement and the TNT Agreement, but asserts that these differences do not detract from the

⁶ *Id.*, citing Docket No. R2012-2, Order Concerning an Additional Inbound Market Dominant Multi-Service Agreement with Foreign Postal Operators 1 Negotiated Service Agreement, November 23, 2011, at 7 (Order No. 996).

conclusion that the Agreement is functionally equivalent to the TNT Agreement. *Id.* at 10-13.

III. COMMISSION ACTION

The Commission, in conformance with rule 3010.44, establishes Docket No. R2016-4 to consider issues raised in the Notice. The Commission invites comments from interested persons on whether the Agreement is consistent with 39 U.S.C. 3622 and the requirements of 39 CFR part 3010. Comments are due no later than January 5, 2016. The public portions of this filing can be accessed via the Commission's website (<http://www.prc.gov>). Information on how to obtain access to non-public material appears in 39 CFR part 3007.

The Commission appoints Nina Yeh to represent the interests of the general public (Public Representative) in this docket.

IV. ORDERING PARAGRAPHS

It is ordered:

1. The Commission establishes Docket No. R2016-4 for consideration of matters raised by the Postal Service's Notice.
2. Pursuant to 39 U.S.C. 505, Nina Yeh is appointed to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.
3. Comments by interested persons in this proceeding are due no later than January 5, 2016.

4. The Secretary shall arrange for publication of this Order in the *Federal Register*.

By the Commission.

Stacy L. Ruble
Secretary